

Part III - Administrative, Procedural, and Miscellaneous

Alternative fuel; definition of liquid hydrocarbon

Notice 2007-97

SECTION 1. PURPOSE

This notice defines liquid hydrocarbons derived from biomass for purposes of the credits and payments provided for alternative fuel and alternative fuel mixtures under §§ 34, 6426, and 6427 of the Internal Revenue Code (the Code).

SECTION 2. BACKGROUND

(a) The credits and payments for alternative fuel and alternative fuel mixtures were added to the Code by § 11113(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59). The credits and payment are allowed beginning October 1, 2006. Notice 2006-92, 2006-43 I.R.B. 774, provides general guidance on these credits and payments.

(b) Section 6426(d)(2) of the Code provides that the term alternative fuel means several specified products including (in § 6426(d)(2)(F)) liquid hydrocarbons derived from biomass (as defined in section 45K(c)(3)). Section 6426(d)(2) also provides that

the term alternative fuel does not include ethanol, methanol, or biodiesel. Biodiesel is defined in section 40A(d)(1). Ethanol and methanol are included in the definition of alcohol in section 40(d)(1).

(c) Although the term hydrocarbon is not defined in the Code, the term is commonly defined as an organic compound containing only hydrogen and carbon. Treasury and the IRS have received numerous inquiries asking whether, for purposes of § 6426(d)(2)(F), the term liquid hydrocarbons derived from biomass can include liquids that contain oxygen, as well as hydrogen and carbon. Examples of liquids containing hydrogen, carbon, and oxygen include fish oil, liquids derived from other rendered fats, biodiesel, and alcohols such as ethanol and methanol.

(d) The fact that Congress specifically excluded ethanol, methanol, and biodiesel (all of which contain oxygen) from the definition of liquid hydrocarbons derived from biomass indicates that, for purposes of section 6426(d)(2)(F), hydrocarbons include substances that contain oxygen.

(e) The Senate Finance Committee has approved a technical correction that would clarify that any liquid fuel derived from biomass qualifies as an alternative fuel. The technical correction would also clarify that any fuel qualifying for an alcohol, biodiesel, or renewable diesel credit or payment does not qualify for the alternative fuel credit or payment.

SECTION 3. DEFINITION

(a) Except as provided in paragraph (b) of this section, liquid hydrocarbons derived from biomass are chemical compounds that are liquid when eligibility for the

credit or payment is determined and are derived from any organic material, including oceanic and terrestrial crops and crop residues, and organic waste products that have a market value. For this purpose--

(1) Eligibility for the credit or payment for alternative fuel mixtures is determined when the alternative fuel mixture is produced; and

(2) Eligibility for the credit or payment for alternative fuel is determined when--

(i) Tax is imposed on the fuel by § 4041(a)(2); or

(ii) Tax would be imposed on the fuel but for the exemptions provided by § 4041

(b), (f), (g), or (h).

(b) Liquid hydrocarbons derived from biomass do not include--

(1) Ethanol, methanol, or biodiesel; or

(2) Oil, natural gas, coal (including lignite) or any product of oil, natural gas, or coal.

SECTION 4. EFFECT OF EXPECTED TECHNICAL CORRECTION

Under current law, ethanol and methanol are excluded from the definition of alternative fuels qualifying for the alternative fuel credit or payment. The technical correction approved by the Senate Finance Committee would provide, in addition, that no other alcohol fuel is eligible for an alternative fuel credit or payment. If this technical correction is enacted it will be retroactive to October 1, 2006. Accordingly, if the technical correction is enacted and a taxpayer was allowed an alternative fuel credit or payment with respect to any alcohol fuel before the date of enactment, the taxpayer will be required to repay the amount of such credit or payment with interest.

SECTION 4. EFFECTIVE DATE

This notice is effective October 1, 2006.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is DeAnn Malone of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice please contact DeAnn Malone at (202) 622-3130 (not a toll-free call).